

REMARKS

Claims 1-50 are pending in the present application. By this Response, claims 6, 18, 29 and 43-46 are amended. Claims 6, 29 and 46 are amended to clarify that the test question timing data representing an elapsed time used by the remotely located user in attempting to answer the test question. Support for this clarification is present in the last phrase of each of these claims. Claims 43-45 are amended for clarification by correcting typographical errors in the preambles of these claims. Claim 18 is amended to correct its dependency. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 112, Second Paragraph

The Office Action rejects claims 43-45 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

As to claims 43, 44, and 45, the Office Action states:

Claims 43-45 recite the limitation “the method of claim 42” (Claims 43-44) and “the method of claim 29” (Claim 45) in line 1. There is insufficient antecedent basis for this limitation in the claim.

Office Action dated May 7, 2003, page 2.

Claims 43, 44 and 45 are amended to recite “apparatus” rather than “method” to provide the appropriate antecedent basis for the claims. Therefore the rejection of claims 43-45 under 35 U.S.C. § 112, second paragraph has been overcome.

II. 35 U.S.C. § 102, Alleged Anticipation Based on *Remschel*

The Office Action rejects claims 6, 9-10, 12, 14-15, 22, 29, 32-33, 35, 37-38, 45-46 under 35 U.S.C. § 102(e) as being allegedly anticipated by *Remschel*, U.S. Patent Number 6,208,832 B1, 03/27/2001, filed 11/14/1997, “Learning System With Response Analyzer”. This rejection is respectfully traversed.

As to claims 6, 29, and 46, the Office Action states:

Regarding Claims 6, 29, and 46, *Remschel* discloses administering a test to a remotely located user (i.e. over a network or the internet) of a client device. See Col. 12: 29-33. *Remschel* discloses receiving test question timing data from the client device, the test question timing data representing an elapsed time used in attempting to answer the test question; and outputting to a proctor device (i.e. the amount of time that has elapsed since the start of the current question). See Col. 12: 55-63. *Remschel* discloses a controller (e.g. via control panel (30)) and at least one interface (i.e. control panel) coupled to the controller, wherein the controller administers a test to a remotely located user of a client device via at least one interface, receives test question timing data representing an elapsed time used in attempting to answer the test question, and outputs the test question timing data to a proctor device (i.e. response analyzer) via the at least one interface, such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user See FIG. 1 and FIG. 19. *Remschel* discloses a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to identify presentation of the test questions on the data processing system, monitor test question timing data in response to the presentation of the test questions on the data processing system in which the test question timing data represents an elapsed time since an answered question from the test questions has been presented. See FIG. 19.

Office Action dated May 7, 2003, pages 2-3.

Claim 6, which is representative of the other rejected independent claims 29 and 46 with regard to similarly recited subject matter, reads as follows:

6. A method of monitoring a test question response time, comprising the steps of:
 - administering a test to a remotely located user of a client device;
 - receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer the test question; and
 - outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user. (emphasis added)

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v.*

Kimberly-Clark Corp., 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicants respectfully submit that *Remschel* does not identically show every element of the claimed invention arranged as they are in the claims. Specifically, *Remschel* does not teach receiving test question timing data from a client device, representing an elapsed time used in attempting to answer the test question, from the client device, or outputting the test question timing data to a proctor device, as recited in claim 6. ✓

Remschel is directed to a learning system with a response analyzer. *Remschel* does teach test question timing data, however, *Remschel* teaches that the test question timing data is the amount of time that has elapsed since the start of the current question for all of the test takers. That is, the test question timing data is not specific to any one test taker and thus, is not received from a client device of a remotely located user. To the contrary, *Remschel* explicitly teaches that the amount of time that has elapsed since the start of the current question is maintained completely within the response analyzer software of the teacher's computer and is for all test takers. See column 12, lines 55-63 which read as follows:

During testing, the companion software provides to the teacher various useful information including the amount of time that has elapsed since the start of the current question, the question number (which generally increments each time the teacher starts a new question), the number of students who have responded to the current question, and the ratio of the number of students who have responded to the current question to the total number of non-absent students (response ratio). These values are updated continuously.

Remschel, column 12, lines 55-63.

From the above, it is clear that *Remschel's* elapsed time is based on a timer in the response analyzer window used by the teacher, which displays the amount of time that the current question has been displayed. Therefore, the elapsed time in *Remschel* is not received from a client device of a remotely located user. Thus, the amount of time that has elapsed since the start of the current question is based on the time that the question is displayed for all students rather than an elapsed time, that is received from a client device of a remotely located user, representing an amount of time the remotely located user has used in attempting to answer the test question, as recited in claim 6.

In view of the above, Applicants respectfully submit that *Remschel* does not teach receiving test question timing data from a client device, the test question timing data ✓

representing an elapsed time used by the remotely located user in attempting to answer the test question, as recited in claim 6. Claims 29 and 46 recite similar features to claim 6 and thus, define over *Remschel* for similar reasons as noted above.

In view of the above, Applicants respectfully submit that *Remschel* does not teach each and every feature of independent claims 6, 29 and 46 as is required under 35 U.S.C. § 102(e). At least by virtue of their dependency on claims 6 and 29, respectively, *Remschel* does not teach each and every feature of dependent claims 9-10, 12, 14-15, 22, 32-33, 35, 37-38, and 45. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 6, 9-10, 12, 14-15, 22, 29, 32-33, 35, 37-38, 45-46 under 35 U.S.C. § 102(e).

Furthermore, *Remschel* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement *Remschel* such that test question timing data is received from a client device and the test question timing data representing an elapsed time used by a remotely located user in attempting to answer the test question, one of ordinary skill in the art would not be led to modify *Remschel* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Remschel* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the Applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

Additionally, *Remschel* does not teach the specific features recited in dependent claims 9-10, 12, 14-15, 22, 32-33, 35, 37-38, and 45. For example, with regard to claims 9 and 32, *Remschel* does not teach sending an instant message to the client devices. The Office Action alleges that this feature is taught by *Remschel* at column 8, lines 41-45 which reads as follows:

Class management further is carried out by means of the companion software's capability of easily allowing the teacher to perform a "group call", wherein the teacher is able to communicate with the students assigned to a selected program group(s).

In actuality, this communication is provided via a voice communication connection between the teacher's station and the student work stations (see column 8, lines 45-57). The communication referred to in this section of *Remschel* is not an instant message. Instant messaging is a known form of text messaging in which pop-up windows on a user's computer display output the text entered by a sender. The communication taught by *Remschel* is voice communication. Nowhere in *Remschel* is it taught or even suggested to use instant messaging to communicate with test taker client computers. Furthermore, even though instant messaging is generally known, prior to the present invention, there has not been any teaching or suggestion to use instant messaging in a testing environment.

A similar distinction applies to claims 10 and 33. Nowhere in *Remschel* is it taught or suggested to receive an instant message from a client device of a test taker. The Office Action alleges that this feature is taught by *Remschel* in that students may transmit their voices back to the teacher via the system of *Remschel* (column 8, lines 48-53). However, as noted above, transmitting a voice communication is not the same as instant messaging. Thus, the voice communication taught in *Remschel* is not the same as the instant messaging recited in claims 10 and 33. ✓

Regarding claims 22 and 45, *Remschel* does not teach storing of the timing data for the test question to update timing data for the remotely located user for use in future tests. The Office Action alleges that this feature is taught by *Remschel* at column 12, lines 55-63 which has been reproduced above. While this section of *Remschel* mentions an elapsed amount of time since the start of the current question, there is nothing in this, or any other, section of *Remschel* that teaches to store timing data to update timing data for a remotely located user. To the contrary, as discussed above, the timing information referred to in *Remschel* is the elapsed time since the question was started for all of the students. Some students may have already answered the question and thus, the time would not reflect the amount of time they used to answer the question. To the contrary, the time in *Remschel* would not provide any information regarding the particular amount of time that any one student used to answer a question. It is merely used to determine when a question should be closed for all of the students. ✓

With respect to claims 14 and 37, *Remschel* does not teach correlating the test question timing data to the administration of the test to the remotely located user based on the session identification, as recite in claims 14 and 37. The Office Action alleges that these features are taught by Figure 19 of *Remschel*, alleges that the starting of a question is the same as receiving a request for administration of a test to a remotely located user, and alleges that a question number is the same as a session identification. Applicants respectfully disagree. ✓

A question number is not the same as a session identifier for identifying the administration of a test to a remotely located user. The question number in *Remschel* is merely an identifier of the current question that is being worked on by all of the students. The question number does not identify a particular administration of a test to a particular student. Thus, the question number is not a session identifier that identifies the administration of a test to a remotely located user.

Furthermore, there is nothing in Figure 19, or anywhere else in *Remschel*, that teaches correlating test question timing data to the administration of a test to a remotely located user based on the session identification. ✓ The timing information in *Remschel* is for the administration of a particular question to all of the students. There is nothing in *Remschel* that teaches the correlation of this timing information to any particular student based on a session ID. In fact, taking the Office Action's interpretation, even if it were somehow possible to interpret the question number as the same as a session ID, the correlation of the question number with an elapsed time for that question number would not give any information regarding the administration of a test to a particular remotely located user. All that would be obtained from such a correlation would be the amount of time that was allowed to elapse before closing of the question to all of the students. There simply is no teaching or suggestion in *Remschel* regarding correlating test question timing data to the administration of a test to a particular remotely located user based on a session identifier that identifies administration of the test to that particular remotely located user.

Regarding claims 15 and 38, *Remschel* does not teach that a session identification includes a proctor device identifier or that outputting test question timing data to the ✓

proctor device is based on the proctor device identifier. The Office Action alleges that this feature is inherent to *Remschel*. Applicants respectfully disagree.

For a feature to be "inherent" in a reference, it must be a feature that necessarily is part of the prior art teachings. In other words, there is no other option other than to have such a feature in the system or method of the prior art. Such is not the case with *Remschel* and the features of claims 15 and 38.

Remschel only teaches a single response analyzer station, i.e. teacher station. Thus, there is no reason in *Remschel* to have a session identifier that includes a proctor device identifier or sending of test question timing data to a proctor device based on such an identifier. The test data from the clients in *Remschel* is always provided to the single response analyzer station. There is no possibility of having more than one response analyzer station in *Remschel* and thus, there is no reason to discern between a plurality of response analyzer stations based on a proctor device identifier, as in the presently claimed invention recited in claims 15 and 38. Thus, despite the allegations made by the Office Action, this feature is not inherent in *Remschel*. Furthermore, not only is this feature not inherent in *Remschel*, for the reasons noted above, this feature is not obvious in view of *Remschel* since there is no teaching or suggestion to have more than one proctor workstation in *Remschel*.

Thus, in addition to being dependent on their respective independent claims, claims 9-10, 12, 14-15, 22, 32-33, 35, 37-38, and 45 are also distinguished over the *Remschel* reference based on the specific features recited therein. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 9-10, 12, 14-15, 22, 32-33, 35, 37-38, and 45 under 35 U.S.C. § 102(e).

III. 35 U.S.C. § 103, Alleged Obviousness Based on *Remschel* and *Walker*

The Office Action rejects claims 1-2, 4-5, 7, 11, 13, 16-21, 23-24, 26-28, 30, 34, 36, 39-44, and 47-50 under 35 U.S.C. § 103(a) as being unpatentable over *Remschel* in view of *Walker et al.*, U.S. Patent Number 6,093,026, 07/25/2000, filed 07/06/1998, "Method And Apparatus For Administering A Survey", hereinafter referred to as *Walker*. This rejection is respectfully traversed.

As to claims 1, 23, 28, and 47, the Office Action states:

Regarding Claims 1, 23, 28, 34, 47, and 49, *Remschel* discloses identifying presentation of test questions on the data processing system. See Col. 2: 17-22. *Remschel* discloses monitoring test question timing data in which the test question timing data represents. See Col. 2: 33-39. *Remschel* discloses an elapsed time since an answered question from the test question has been presented (i.e. the elapsed time since the start of the current question). See Col. 12:55-63. *Remschel* discloses a bus system (i.e. communication router). See FIG. 1. Memory including a set of instructions would have been an inherent feature of *Remschel*'s invention.

Remschel does not disclose expressly generating an alert (i.e. fraud signal) after the test question timing data exceeds a threshold (i.e. predetermined threshold). However, *Walker* teaches such in Col. 10: 38-42. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the method and system of *Remschel* generating an alert after the test question timing data exceeds a threshold, in light of the teaching of *Walker*, in order to inform of inconsistencies in responding to test questions.

Office Action dated May 7, 2003, pages 5-6.

Claim 1, which is representative of the other rejected independent claims 23, 28, and 47 with regard to similarly recited subject matter, reads as follows:

1. A method for monitoring responses to test questions presented in a data processing system, the method comprising the computer implemented steps of:
identifying presentation of the test questions on the data processing system;
responsive to the presentation of the test questions on the data processing system, monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test questions has been presented; and
generating an alert after the test question timing data exceeds a threshold.

(emphasis added)

Neither *Remschel* nor *Walker*; either alone or in combination, teach or suggest generating an alert after the test question timing data exceeds a threshold. *Remschel* teaches the system previously described. As stated in the Office Action (page 6), *Remschel* does not disclose generating an alert after the test question timing data exceeds a threshold. However, The Office Action alleges that this feature is taught by *Walker* at column 10, lines 38-42 which read as follows:

If the response time is less than a predetermined threshold (step 1208), then a fraud signal is generated (step 1210). Although the predetermined threshold illustrated in FIG. 12 is the exemplary value "three seconds", those skilled in the art will understand that other values may be used.

Walker teaches generating a fraud signal if a response is less than a predetermined threshold (i.e. too quick) rather than after test question timing data exceeds a threshold, as recited in claim 1. This is because *Walker* is concerned with fraud in the answering of surveys, i.e. a user selecting answers without reading the survey questions just to obtain a reward for completing the survey but not providing any valuable information. To the contrary, the present invention is concerned with sending alerts to test takers and proctors when it is determined that a test taker is taking too much time to answer questions on a test.

Walker would not want to send a fraud signal if the amount of time a user takes to answer a question is above a threshold. In fact, *Walker* attempts to encourage users to spend more time in answering a question so that valuable information may be obtained rather than spending less time. Thus, *Walker* explicitly teaches away from the features recited in claims 1, 23, 28 and 47. That is, at no time would *Walker* want to penalize a user by sending a fraud signal when the user takes longer than a threshold amount of time to answer a question. It is only when the user is apparently not paying attention to the questions and is merely randomly answering the questions that *Walker* sends a fraud signal. Therefore, not only does *Walker* not teach or suggest this feature in claims 1, 23, 28 and 47, it would not be obvious to modify *Walker* or the alleged combination of *Remschel* and *Walker*, to include this feature since to do so would undermine the very purpose of the *Walker* system, i.e. the detection of users who are spending too little time in answering survey questions.

Moreover, there is no teaching or suggestion in either of *Remschel* or *Walker* regarding the desirability of combining these two systems in the manner alleged by the Office Action. The timing data in *Remschel* is used to determine when to close a question of a test to a plurality of students. The timing data in *Walker* is used to determine when a particular user is not paying attention to survey question and is merely answering them randomly. There is no teaching or suggestion in *Remschel* to the effect that it would be desirable to monitor to determine when a student is spending too little

time on a question of a test. Moreover, there is no teaching or suggestion in *Walker* regarding the desirability to monitor a test question time for a plurality of students to determine when to close a question. The only teaching or suggestion to even attempt to combine *Remschel* and *Walker* is completely based on a hindsight reconstruction having first had benefit of Applicants' claimed invention and disclosure.

Moreover, even if it were somehow obvious to combine *Remschel* with *Walker*, the result still would not be the invention recited in claims 1, 23, 28 and 47. To the contrary, the resulting system would be a combination of the testing system of *Remschel* in which time data used to determine when to close a question, and a mechanism for determining when students answer questions too quickly. There still would not be any teaching or suggestion to generate an alert after test question timing data exceeds a threshold.

Thus, neither *Remschel* nor *Walker*, either alone or in combination, teach or suggest generating an alert after the test question timing data exceeds a threshold. At least by virtue of their dependency on claims 1, 23, 28 and 47, respectively, neither *Remschel* nor *Walker*, either alone or in combination, teach or suggest the features of dependent claims 2, 4-5, 7, 11, 13, 16-21, 24, 26-27, 30, 34, 36, 39-44, and 48-50. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claims 1-2, 4-5, 7, 11, 13, 16-21, 23-24, 26-28, 30, 34, 36, 39-44 and 47-50 under 35 U.S.C. § 103(a).

In addition, with regard to claims 11, 20 and 43, neither *Remschel* nor *Walker*, either alone or in combination, teach or suggest the specific feature of alerting a remotely located user when a test question timing data exceeds a predetermined threshold. To the contrary, as noted above, *Walker* actually teaches away from such a feature in that *Walker* teaches the sending of a fraud signal only when the amount of time for answering a question is below a threshold. Furthermore, as discussed above, there is no reason why one would modify *Walker* or the combination of *Walker* with *Remschel* to generate an alert, let alone an alert to a remotely located user, when an amount of time for answering a question exceeds a threshold since *Walker* is directed to determining when users are not paying attention to questions and merely answering randomly, i.e. using less than a threshold amount of time to answer questions.

Regarding claims 17 and 40, neither reference teaches or suggests monitoring test question timing data for evidence of greater than expected response time to the test question, wherein outputting the test question timing data to a proctor device is performed in response to determining that evidence of greater than expected response time to the test question is present. The Office Action fails to address these specific features and instead treats claims 17 and 40 as reciting the features of claims 18 and 41 (see Office Action, page 8). Thus, the Office Action has failed to establish a prima facie case of obviousness with regard to the features of claims 17 and 40. ✓

Moreover, neither reference teaches monitoring for greater than expected response time to a test question. In fact, *Walker* explicitly teaches the opposite of this feature. *Walker* monitors for less than expected response time to a survey question. That is, *Walker* is only concerned with determining when a user takes too little time to respond to a survey question. *Remschel*, as recognized by the Office Action, does not teach monitoring response time at all.

In addition, neither reference teaches outputting test question timing data to a proctor device in response to determining that evidence of greater than expected response time to the test question is present. *Remschel* always outputs timing data on the response analyzer window of the teacher's station because the timing data is part of the response analyzer window software. *Walker* does not teach or suggest sending anything to a proctor device, let alone doing so in response to determining that greater than expected response time is present. If *Walker* were to teach anything remotely similar to this feature, arguendo, it would be to output timing data to a proctor workstation in response to determining that less than expected response time is present.

Regarding claims 18 and 41, neither reference teaches or suggests comparing previously received test question timing data to currently received test question timing data to determine if a change in the test question timing data indicates evidence of greater than expected response time to a test question. The Office Action admits that *Remschel* does not teach this feature but alleges that *Walker* teaches this feature at column 10, lines 51-53 which reads as follows: ✓

Referring to FIGs. 13A and 13B, a method 1300 is performed by the controller 12 (FIG. 1) in applying a fourth inconsistency test to responses. In particular, the controller 12 measures the time it takes a respondent to provide responses to a plurality of respondent questions.

When reading further, column 10, lines 53-56 make it clear that this comparing of response times is to determine if there is any variability to the times to determine if a computer is responding to the survey questions or a human that is not paying attention to the survey questions is responding:

If the response time does not vary significantly, then it likely indicates that the respondent is a computer or a human that is not paying attention.

Thus, despite the allegations made by the Office Action, *Walker* in fact does not teach comparing test question timing data to determine if there is evidence of greater than expected response time to a test question. To the contrary, *Walker* only compares times between questions in order to determine if a human that is not paying attention or a computer is responding to the survey.

Regarding claims 19 and 42, neither reference teaches or suggests generating an alert profile for a remotely located user for a particular test based on at least one of a data profile associated with the remotely located user, an examination question timing database, and a degree of difficulty associated with a question on the test. The Office Action admits that *Remschel* does not teach this feature but alleges that *Walker* teaches this feature at column 11, lines 14-18 which read as follows:

Referring to FIG. 14, a method 1400 is performed by the controller 12 (FIG. 1) in applying a fifth inconsistency test to responses. In particular, the controller 12 determines whether the responses define a predetermined pattern (e.g., all responses are the first response choice). If the responses define a predetermined pattern, then it likely indicates that the respondent is a computer or a human that is not paying attention.

This section of *Walker* merely teaches looking at the answers provided to determine if there is any variability to the answers rather than a pattern. This section of

Walker does not teach or suggest the generating of an alert profile for a remotely located user based on any one of a data profile associated with a remotely located user, an examination question timing database, or a degree of difficulty of a question on a test. *Walker* never even mentions the generation of an alert profile. Furthermore, there is also no teaching or suggestion in the references to send an alert based on an alert profile (claims 20 and 43).

IV. 35 U.S.C. § 103, Alleged Obviousness Based on *Remschel*, *Walker*, and *Sugimoto*

The Office Action rejects claims 3 and 25 under 35 U.S.C. § 103(a) as being unpatentable over *Remschel* in view of *Walker* as applied to claims 1-2, 4-5, 7, 11, 13, 16-21, 23-24, 26-28, 30, 34, 36, 39-44, and 47-50 above, and further in view of *Sugimoto*, U.S. Patent Application Publication Number US 2002/0102522 A1, 08/01/2002, filed 05/15/2001, "Method And System For Performing Adaptive Test". This rejection is respectfully traversed.

As to claims 3 and 25, the Office Action states:

Regarding Claims 3 and 25, *Remschel/Walker* does not disclose expressly wherein the program is an applet. However, *Sugimoto* teaches such on p. 2, [0038]. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate an applet into the method and system of *Remschel/Walker*, in light of the teaching of *Sugimoto*, in order to display time elapsed or notify time elapsed via voice.

Office Action dated May 7, 2003, page 10.

Since claims 3 and 25 depend from independent claims 1 and 23 respectively, the same distinctions between *Remschel* in view of *Walker* and the invention recited in claims 1 and 23 apply to dependent claims 3 and 25. More specifically, *Sugimoto* does not provide for the deficiencies of *Remschel* and *Walker* with regard to independent claims 1 and 23. *Sugimoto* is only cited as allegedly teaching an applet. While *Sugimoto* may teach an applet, *Sugimoto* does not teach or suggest generating an alert after test question timing data exceeds a threshold, as recited in claims 1 and 23. Thus, any alleged

combination of *Sugimoto* with *Walker* and *Remschel* still would not result in the invention recited in claims 1 and 23 from which claims 3 and 25 depend.

Since *Remschel*, *Walker*, and *Sugimoto* do not teach or suggest these features that are present in independent claims 1 and 23, the alleged combination of *Remschel*, *Walker*, and *Sugimoto* still does not teach or suggest the features of dependent claims 3 and 25 at least by virtue of their dependency on independent claims 1 and 23. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 3 and 25 under 35 U.S.C. § 103(a).

V. 35 U.S.C. § 103, Alleged Obviousness Based on *Remschel*

The Office Action rejects claims 8 and 31 under 35 U.S.C. § 103(a) as being unpatentable over *Remschel*. This rejection is respectfully traversed.

As to claims 8 and 31, the Office Action states:

Regarding Claims 8 and 31, *Remschel* does not disclose expressly billing the remotely located user for the administration of the test. However, such is old and well known in the art (e.g. computerized SAT, Greening, etc.). Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate billing the remotely located user for the administration of the test into the method and system of *Remschel*, in order to collect payment for providing testing services.

Office Action dated May 7, 2003, page 11.

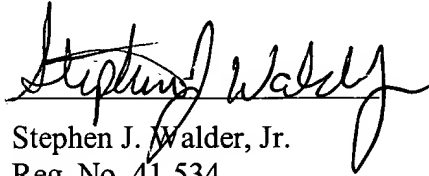
Claims 8 and 31 depend from claims 6 and 29, respectively, and thus distinguish over *Remschel* at least by virtue of their dependency. As discussed above, *Remschel* does not teach or suggest receiving test question timing data from a client device, wherein the test question timing data represents an elapsed time used by the remotely located user in attempting to answer a test question or outputting the question timing data to a proctor device. Since *Remschel* does not teach or suggest these features that are present in independent claims 6 and 29, *Remschel* does not teach or suggest the features of dependent claims 8 and 31 at least by virtue of their dependency on independent claims 6 and 29, respectively. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 8 and 31 under 35 U.S.C. § 103(a).

VI. Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE: September 2, 2003



Stephen J. Walder, Jr.
Reg. No. 41,534
Carstens, Yee & Cahoon, LLP
P.O. Box 802334
Dallas, TX 75380
(972) 367-2001
Attorney for Applicants

SJW/va